

UTAH SCHOOL LAW UPDATE

Utah State Office of Education

September 2008

Inside this issue:

UPPAC Case of the Month Eye On Legislation our g adult /Our Vour Questions 2 2 Cher, our Cases Your Questions 3



UPPAC CASES

Setting Appropriate Boundaries

We often talk about "boundaries" in high school athletics and politics (states, Senate districts, and voting districts). Boundaries are important to homeowners. People build fences and walls to establish boundaries. Boundaries may establish ownership or cause contention.

So what do we mean when we talk about boundaries between public school educators and students?

- 1) **B**oundaries establish who are the teachers/counselors/coaches/adults and who are the young, maturing students.
- 2) **B**oundaries protect both educators and students.
- 3) **B**oundaries can be hard to define, but it is clear—and often life-changing for those involved—when they are violated in the public school setting.
- 4) **B**oundary violations affect not only the students who are violated, but also may change forever how safe children feel at school, the confidence parents have in public schools and may adversely influence in extending circles how young men and young women form relationships.

It may be our heightened imagination, but it seems that UPPAC is receiving a significant increase in referrals from school districts and parents about educators who don't remember that they are the responsible adults in the school lives of public school students.

However precocious, aggressive or flirtatious students may be, teachers are ALWAYS responsible for their behavior toward students. Adults can choose religious leaders, pediatricians, scout leaders, even friends for their children—their children are often ASSIGNED to the only available sixth grade teacher. Some examples:

Sometimes, students and teachers or coaches or teacher/coaches send and receive many, many text messages to each other. Teenagers (and even younger students) flirt via "texts." Teachers should not.

Students and teachers begin relationships via email. An occasional email from student to teacher requesting a missed assignment or reminding a student about an after-school tutoring session is fine; but when the emails become chatty, flirtatious and frequent problems are imminent.

Increasingly, teachers have Facebook or My Space pages. Those pages can be designated "private" or "public"-by the owner. Those with pages can accept "friends" to access their otherwise private pages. Educators should be mindful that young, impressionable and curious students may seek (and gain!) access to teachers' pages. Though there may be some standards for pictures posted even on private pages, mature or downright raunchy jokes and messages can be

posted by "friends" on page owners' "walls." As a teacher, are you comfortable with your sixth grade students reading messages sent to you from adult "friends?" Do you allow your 16-year-old soccer players to become your "friends" on you're My Space page?

What about teachers who reward students with lunches or dinners with their teachers? Probably not to worry so long as there are several students with a couple of teachers and parents who accompany their children.

Do you talk with students about your dates or your relationships? Of course students know (and should know!) that we have lives extending beyond the classroom walls, but educators should not discuss dates, marriage or intimate activities or feelings with students.

UPPAC members do not view themselves as morals police. However, it seems like the distinctions between students. teachers, friends, and confidantes grows more fuzzy every year. Maybe more teachers should use a very simple test BEFORE they have verbal, email or text messaging exchanges with students: "Would I be comfortable if my spouse/ partner/student's parent read or heard my casual remark or text to a student?" Or would I squirm uncomfortably and wish that I had been slightly more professional, appropriate or mature?

Teachers in the Movies

Going to the movies is one of Americans' favorite past time. In fact, seven in ten Americans have gone to the movies in the past year, with this group going at least eight times on average. The summer of 2007 set box office records, with receipts reaching \$4.161 billion, a jump of 8% over the previous record set in 2004. According to the Nielsen NRG American Moviegoing 2007 study, 77% of moviegoers rated their summer movie experience as "time/money well spent", a good value for the movie-going buck. However, almost 20% of moviegoers said they would have preferred to view the movie on a DVD at home. (http://www.nielsen.com/consumer_insight/issue7/ci_story2.html)

There are many famous movies with teachers as the main character in them; many have made lots of money! In fact, the impact of movies with teachers in them have been studied and discussed by academics. A conference to be held in March 2009 in California will address "Teachers, Teaching, and the Movies: Representations and Pedagogy in Film, Television, and New Media."

Conference creators stated: "Movies and television have a long tradition of taking school life and teachers as subjects for its stories. These stories have circulated powerful, though often uncomplicated, representations of teachers and influenced our sense of what meaningful educational experiences are supposed to look like and how good teachers teach. Such representations have also shaped our understanding of the dynamics of teacherstudent relationships and the roles (positive and negative) that teachers play in the lives of students and the larger community. In short, the movies have become unlikely authoritative texts on what counts as good education." http://www.h-net.org/announce/

Feeling stressed or burned out?? Get inspired by watching some of the most famous and lucrative "teacher" movies in the past 40 years!

	1
Most Famous (A)	Top Grossing (B)
Stand and Deliver (PG)	The Karate Kid (PG)
Dangerous Minds (R)	In and Out (PG-13)
Lean on Me (PG-13)	Finding Forrester (PG-13)
Mr. Holland's Opus (PG)	The Faculty (R)
Dead Poet's Society (PG)	Anna and the King (PG)
To Sir with Love (NR)	Summer School (PG-13)
The Miracle Worker (NR)	Play It Forward (PG-13)
Renaissance Man (PG-13)	October Sky (PG)
Music of the Heart (PG)	Children of a Lesser God (R)
The Karate Kid (PG)	Major Payne (PG-13)

(A) http://712educators.about.com/od/burnoutstrategies/tp/inspmovies.htm (B) http://www.boxofficemojo.com/genres/chart/?id=teacherselements.htm

UPPAC Case of the Month

Should a young man who had one DUI (driving under the influence) offense two years ago, become licensed as a Utah teacher; what about a young woman with two convictions for retail theft (shoplifting)? What would parents think about a teacher who has one conviction for soliciting a prostitute or lewdness?

It may be that Utah's school age population is growing or that a softening economy is inspiring young people or career changers to try teaching in public schools, but the Utah Professional Practices Advisory Commission (UPPAC) is seeing significantly more background check applicants with checkered pasts.

How does UPPAC make licensing decisions? The following <u>brief</u> questions that are considered by UPPAC may help school districts as they make hiring decisions about these same prospective

teachers:

- 1. **H**ow many offenses are there? [Just one, likely no problem. More than three, is there a concerning pattern?]
- 2. What kind of offense(s)? [Trespassing, usually not a problem; lewdness, hummm, domestic violence, know that usually both parties are cited when the police are called.]
- 3. **H**ow long ago was the last offense? [More than three years, possibly okay. One year ago, more discussion needed.]
- 4 **I**s the licensing applicant still on courtordered probation? [If yes, the applicant will <u>not</u> be licensed <u>at least</u> until probation ends.]
- 5. Sometimes drug or sex offenses are disguised even on background checks. Be cautious. Ask the applicant <u>directly</u> what happened. Several kinds of offenses are characterized as "disorderly conduct."

"Retail thefts" may vary dramatically-they are all illegal.

Depending upon the number and nature of offenses, UPPAC asks applicant for a letter of explanation of offense(s) OR asks for the letter AND police and court documentation of offenses. Sometimes more investigation or personal discussions or hearings are in order.

This subject warrants more discussion among educators—and community members. How squeaky clean do teacher applicants have to be? Are we doing everything possible and legal to recruit and screen prospective teachers? Should we do more?

Children are our most precious asset; they are in the legal protection of schools during the regular school day. We must offer exemplary role models and we <u>must</u> keep children safe.

Utah State Office of Education Page 2

Recent Education Cases

A.B. v. State, 885 N.E.2d 1223 (Ind. 2008). The plaintiff, A.B., appealed a trial court's decision labeling her as a juvenile delinquent for postings on MySpace.com about her principal. The appellate court reversed the trial court's decision believing that her speech was protected political speech. However, the Supreme Court of Indiana granted a transfer. Essentially, the Indiana Supreme Court decided that the trial court's decision was not supported by evidence presented at trial. Of utmost importance to the court was the lack of testimony on the functioning of public versus private profiles on MySpace.com in order to determine if the plaintiff's postings were intended to harass her principal. Since intent is critical to a claim of harassment, the court reversed the trial court's decision because the evidence presented did not proved this necessary element.

<u>DisStiso v. Town of Wolcott</u>, 539 F. Supp. 2d 562 (D. Conn. 2008). The mother of the only African-American student in his kindergarten and first-grade classes sued the town, school board, superintendent, principal of the elementary school, and the student's teachers, claim-

ing that he was the target of racial slurs as well as racially motivated physical abuse by his classmates and that the defendant did nothing to stop the racially discriminatory conduct. In granting in part and denying in part the defendant's motion for summary judgment, a federal district held that there were genuine issues of material fact as to whether the principal and teachers knew about the mistreatment of the student by classmates and showed deliberate indifference to that treatment. There were also genuine issues of material fact on the state tort law question of whether the superintendent, principal and first-grade and kindergarten teachers were aware that the student was undergoing racial harassment by other students and by not intervening, intentionally inflicted emotional distress on the student and parent. Material issues of fact as to the nature and extent of any physical contact between the student and his first-grade teacher precluded granting summary judgment on the claim that the teacher had assaulted and battered the student by grabbing him by his arm and pulling him out of his chair. The claim of municipal liability was dismissed because the plaintiffs failed to show any policy or custom of condoning racial discrimination. The superintendent was entitled to qualified immunity from the state law claim that he had failed to properly supervise his staff. Exposure of the student to harassment was not lengthy enough in its duration or location within the school to allow for the superintendent to take any meaningful action.

Sanders v. Brown, 257 F. App. 666 (4th Cir. 2008). The U.S. Court of Appeals for the Fourth Circuit determined that a student failed to show the high burden of deliberate indifference that is needed to make out a 42 U.S.C. Section 1983 claim. The student had alleged that while she was enrolled in this school, a teacher had inappropriately touched her. In this case, the principal did not take additional precautions, such as increased monitoring, but there was no evidence present to the Court that the added precaution would have mattered. The Court determined that for the student to establish whether the principal demonstrated deliberate indifference to the presence of risk of inappropriate touching by the teacher, the student had to prove that the principal had continuously failed to act in the face of documented inappropriate physical contact.

Your Questions

Question: My son attends a charter school. I have had other children in dual enrollment—enrolled jointly in home school and the neighborhood public school. Can my son at the charter school also be dually enrolled?

Answer:

Short answer, yes. Dual enrollment, as described in Utah law, applies to ALL public schools. However, Utah charter schools are in an interesting position. A charter school enrolls a student expecting to receive full state funding for the student. If an ninth grade student is in dual enrollment (studying math and piano at home with parents, but attending the charter school for the rest of the school day), the charter school only receives 2/7 of the state funding for the student. This would be equally true of a

What do you do when. . . ?

neighborhood school if a student attends five periods at the public school and is home schooled for two periods. In order to be fair to charter schools in their unique circumstances, but also acknowledging that there is no exemption for dual enrollment in public charter schools, a student attending a charter school must attend the public school for at least 3/4 of the school day. He can be released for home schooling or private schooling for the rest of the day. The charter school receives proportionate funding from the

Dual enrollment does not require a traditional public school to enroll a charter school student for part of the school day. A traditional school MAY work with a charter school and allow a student (or several students) to be enrolled in both charter and traditional school—at the traditional school's discretion. The schools would split the state funding proportionately.

Question: I teach elementary school in rural Utah. I recently received an insightful email from a friend, at my school address, about a national political candidate. I thought I would share my friend's helpful information, which clearly criticized one candidate and uses forceful language, with my family and colleagues. Is there any problem with passing on this helpful political insight?

Utah State Office of Education Page 3

Utah State Office of Education

250 East 500 South P.O. Box 144200 Salt Lake City, Utah 84114-4200

Phone: 801-538-7830 Fax: 801-538-7768 Email: jean.hill@schools.utah.gov





The Utah Professional Practices Advisory Commission, as an advisory commission to the Utah State Board of Education, sets standards of professional performance, competence and ethical conduct for persons holding licenses issued by the Board.

The Government and Legislative Relations Section at the Utah State Office of provides information, direction and support to school districts, other state agencies, teachers and the general public on current legal issues, public education law, educator discipline, professional standards, and legislation.

Our website also provides information such as Board and UPPAC rules, model forms, reporting forms for alleged educator misconduct, curriculum guides, licensing information, NCLB information, statistical information about Utah schools and districts and links to each department at the state office.

Your Questions

(Continued from page 3)

Answer: You SHOULD NOT use school computers to further your personal political agenda. It is unprofessional to do so. You should not send or forward political messages, regardless of the candidate or issue, using school equipment or resources. You may, of course, promote any legal points of view that you have, from your home computer. You may also provide PURELY FACTUAL information through the school. For instance, if a parent emails you asking for the names of local school board candidates, you may answer the parent's question.



